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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

FLOYD WALLACE,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT; STATE OF NEVADA; CHRISTIAN TORRES; JASON SHOEMAKER; CORY MCCORMICK and DOES 1 to 50, inclusive,

Defendants.

Case Number:
2:23-cv-00809-APG-NJK

DEFENDANT LVMPD'S RESPONSE TO PLAINTIFF'S MOTION TO EXTEND TIME TO RESPOND TO MOTION (ECF NO. 14)

Defendant Las Vegas Metropolitan Police Department ("LVMPD"), by and through its attorney of record, Marquis Aurbach, hereby files its Response to Plaintiff's Motion to Extend Time to Respond to Motion. (ECF No. 14)

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On July 16, 2023, Defendant LVMPD filed its Motion to Preclude Jose DeCastro from Practicing Law Without a License and to Strike Plaintiff's Complaint as an Improperly Filed Pleading ("LVMPD's Motion"). (ECF Nos. 10 & 11) Generally, LVMPD's Motion requests an order (1) precluding, non-attorney, Jose DeCastro, from practicing law without a license by assisting Mr. Wallace in this lawsuit, and (2) striking Mr. Wallace's Complaint due to Mr. DeCastro's involvement.

On July 21, 2023, Mr. Wallace emailed LVMPD requesting an extension to respond to LVMPD's Motion and threatening sanctions. **(Exhibit A)** Within twenty-minutes of

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receipt, LVMPD agreed to Mr. Wallace's request and informed him he could file an unopposed motion or as a stipulation and order. Mr. Wallace never responded to LVMPD's email and, three days later, filed his current Motion to Extend Time to Respond to Motion. (ECF No. 14) Mr. Wallace requests until August 15, 2023, to oppose LVMPD's Motion. (*Id.* at 2:4)

Although Mr. Wallace should have ended his Motion at this point, he chose to include a limited opposition to LVMPD's Motion. (*Id.* at 2:6-3:18) Ironically, the limited opposition provides further evidence Mr. DeCastro is drafting Mr. Wallace's pleadings.

II. LEGAL ARGUMENT

A. LVMPD HAS NO OBJECTION TO MR. WALLACE'S EXTENSION REQUEST.

As stated in LVMPD's July 21, 2023 email to Mr. Wallace, LVMPD is "agreeable to extending the time for [Mr. Wallace] to respond to" LVMPD's Motion. (LVMPD also unilaterally agreed it would extend Mr. Wallace's deadline to respond to LVMPD Motion to Dismiss (ECF No. 8). However, Mr. Wallace did not take LVMPD up on the offer and has filed his opposition to that motion. (ECF No. 15)). Therefore, LVMPD is agreeable to extending Mr. Wallace's response deadline to LVMPD's Motion to August 15, 2023.

B. MR. WALLACE'S LIMITED OPPOSITION PROVIDES FURTHER EVIDENCE MR. DECASTRO IS UNLAWFULLY ASSISTING HIM.

According to Mr. Wallace, LVMPD's Motion has no factual basis because "no factual assertions are supported by a declaration or affidavit and the attached document shas no verification." (ECF No. 14 at 2:6-8) According to Mr. Wallace, Fed. R. Civ. P. 75(d) prohibits LVMPD from correcting any rule violations in its eventual reply. (*Id.* at 2:6-9)

First, Mr. Wallace's reliance on Fed. R. Civ. P. 75(d) is problematic. This rule was abrogated in 1997. Second, there is local rule in Nevada requiring the submission of an affidavit with the filing of a motion. *See* LR 7-2. A federal court that does have local rules requiring the attachment of an affidavit to a motion is the District Court for the District of Massachusetts. *See* D. Mass. L.R. 7.1(b)(1). Interestingly, Mr. DeCastro just lost a lawsuit in Massachusetts subject to those local rules. *See DeCastro v. Abrams,* 1:22-cv-11421-ABD,

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MAC:14687-464 5166347_1 7/26/2023 3:36 PM

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2023 WL 4472343 (D. Mass. 2023). In short, it appears Mr. Wallace is relying upon the federal rules of Massachusetts - a jurisdiction where Mr. DeCastro recently litigated and lost. Thus, Mr. Wallace's Motion to Extend either provides further support of Mr. DeCastro's assistance or is simply another coincidence.

Third, Mr. Wallace represents LVMPD has "no supporting evidence" for the Motion to Preclude. (ECF No. 14 at 2:13-19) Mr. Wallace knows this representation is false. The day following Mr. Wallace's arrest, Mr. Wallace and Mr. DeCastro went to the LVMPD substation. As both Mr. DeCastro and Mr. Wallace filmed their interaction with a sergeant, Mr. DeCastro clearly says "I am going to assist Floyd in suing you guys." (**Exhibit B** at 00:46) Thus, evidence exists from Mr. DeCastro's own mouth. Mr. Wallace was standing within five feet of Mr. DeCastro when he made his announcement, filming. In addition, Mr. DeCastro has recently uploaded several videos bragging he has filed two lawsuits against LVMPD. A search of the records establishes Mr. DeCastro has filed only one lawsuit under his name.

III. CONCLUSION

Based upon the above, LVMPD does not oppose Mr. Wallace's extension request.

Dated this 26th day of July, 2023.

MARQUIS AURBACH

By *s/Craig R. Anderson*
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANT LVMPD'S RESPONSE TO PLAINTIFF'S MOTION TO EXTEND TIME TO RESPOND TO MOTION (ECF NO. 14)** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 26th day of July, 2023.

☐ I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

☒ I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Floyd Wallace
1613 Leopard Lane
College Station, TX 77840
Pro Per

s/Sherri Mong
an employee of Marquis Aurbach

Exhibit A

Craig Anderson

From: Craig Anderson
Sent: Friday, July 21, 2023 1:23 PM
To: Floyd Wallace civil rights
Cc: Sherri Mong
Subject: RE: Where do you stand on a motion for extension of time to respond to your motion?

Hi Mr. Wallace:

Thank you for the email. I am agreeable to extending the time for you to respond to the Motion to Strike and Motion to Dismiss. You can do it as an unopposed motion or you can draft a stipulation and order.

How long do you want?

Best,

Craig

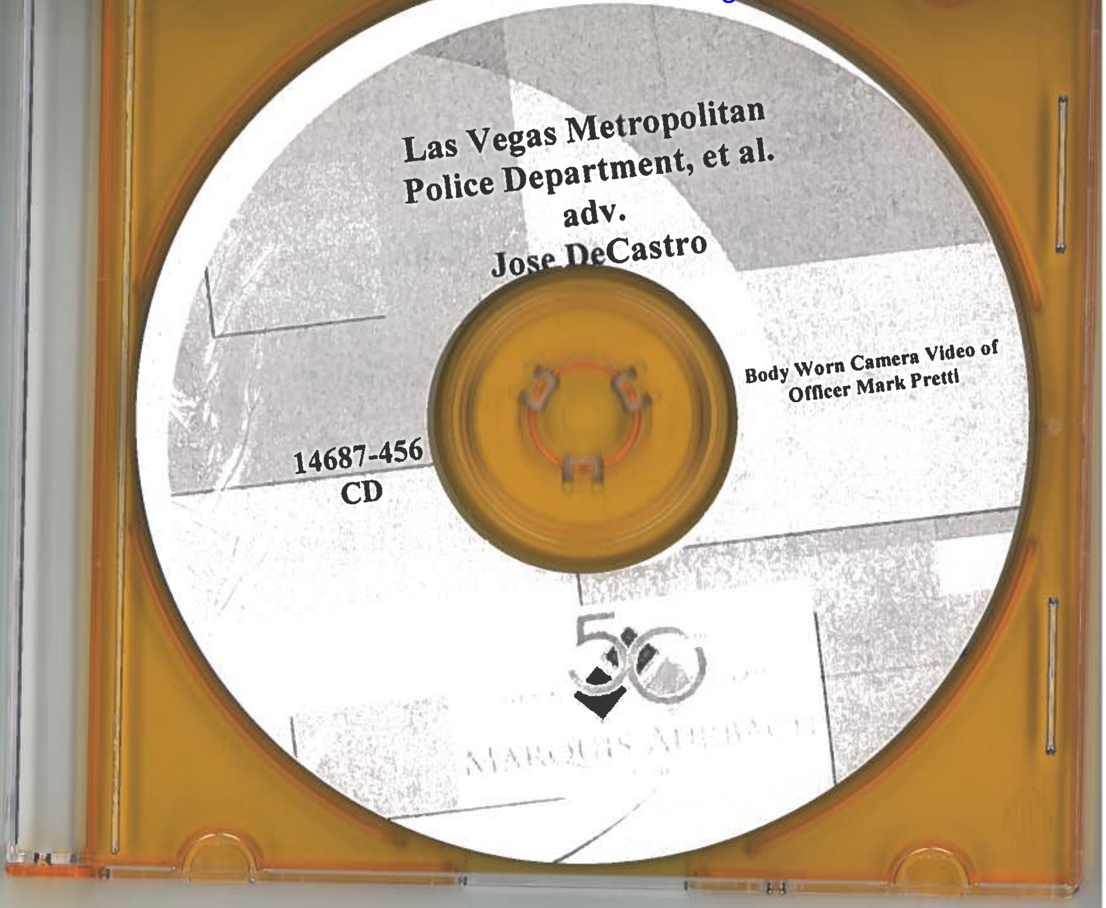
From: Floyd Wallace civil rights <floydwallacecivilrights@gmail.com>
Sent: Friday, July 21, 2023 1:04 PM
To: Craig Anderson <canderson@maclaw.com>
Subject: Where do you stand on a motion for extension of time to respond to your motion?

Dear Craig Anderson:

Will you oppose a motion for an extension of time to respond to your motion to strike my complaint? In order to allow you the full 21 days to withdraw it before I file for sanctions.

Floyd Wallace

Exhibit B


Las Vegas Metropolitan
Police Department, et al.
adv.
Jose DeCastro
Body Worn Camera Video of
Officer Mark Pretti
14687-456
CD